

Subcommittee on Duties of Elected Officials— Supplemental Recommendation

Proposed Charter Language on Appointments to Outside Organizations, Prepared for
Submission to the Full Committee by James Ingram

Per Subcommittee request, staff has prepared this report for forwarding to the San Diego Charter Review Committee.

At the Subcommittee's request, the staff worked with representatives from the City Attorney's Office to propose draft language for the City Charter. These representatives have helped to ensure that the form of the language is acceptable, although they are not authorized to endorse its content.

The Subcommittee unanimously recommended proposed Charter language on appointments to outside organizations at its August 31, 2007 meeting.

APPOINTMENTS TO OUTSIDE ORGANIZATIONS

Current Language

"Section 265: The Mayor

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(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:

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(13) Sole authority to appoint City representative to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor."

Proposed Ballot Language Recommended by Subcommittee

Section 265: The Mayor

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(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:

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(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. In such cases the Mayor shall have the right to submit nominees for consideration.

Staff Addendum

The Subcommittee initially favored adoption of language that would have established an appointment process granting the Mayor the authority to nominate individuals, with the Council appointing them to office. However, representatives of the City Attorney's Office counseled that such a nomination process would not be permissible, as appointments to many outside organizations is not a "municipal affair" but a matter of statewide concern. Therefore, the Subcommittee voted to approve language that would allow the Mayor to offer nominees for Council consideration, but also authorize the Council to make nominations, leaving no doubt that the Council remains the appointing authority.

The City Attorney has opined that some of these appointments by the Council or its President are subject to the Mayoral veto (Opinion dated February 28, 2006). In that opinion, the City Attorney contended that it is legitimate to harmonize the state law with the Charter by allowing the Mayor to exercise the veto at the end of the appointments process (followed by override, potentially). However, the Office's representatives believe that harmonizing state law and the Charter by giving the Mayor a role at the front end through the use of nomination authority would not withstand a court challenge.

The language recommended above may be the best the Charter Review Committee can do in terms of establishing an appointments process that follows the federal model more closely. There does not appear to be any specific case in which the courts have addressed the legitimacy of Charter language authorizing the Mayor to nominate representatives to entities where controlling law gives the Council appointment authority. However, the language proposed above rests on some precedent, in that the City employed a similar process under Council Policy 13, prior to implementation of the Strong Mayor system.